

provided by this Note, and Willson has provided Moonbeam written notice of such failure, Willson may at his reasonable option, whether immediate or at the time of final payment of the indebtedness evidenced by this Note, impose a delinquency or "late" charge equal to Two Hundred and Fifty Dollars (\$250) in respect to each and every past-due payment; provided, however, that if any such delinquency or "late" charge is in excess of the amount permitted to be charged to Moonbeam under applicable law. Willson shall be entitled to collect a delinquency or "late" charge at the highest rate permitted by such law. Moonbeam agrees that any such delinquency or "late" charge shall not be deemed to be additional interest, but shall be deemed to be a fair estimate of the expenses which will be suffered by Willson by reason of such late payment since computing the actual amount of Willson's expenses in advance is impracticable or extremely difficult.

MOONBEAM, INC.

Attest: _____

By _____
President

We personally guarantee this Promissory Note:

Fred Constant, Individually

Mary F. Constant, Individually

STATE OF _____

COUNTY OF _____

On _____ before me, _____
(Name/Title, i.e. "Jane Doe, Notary Public")

_____ personally appeared
_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Signature)

[K:\0068\UPROM\ISNT AWF]

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into this _____ day of _____, 1995 by and among Gary E. Willson ("Willson"), Moonbeam, Inc. ("Moonbeam"), and Haley, Bader & Potts, acting as escrow agent ("Escrow Agent").

Willson and Moonbeam have entered into a Settlement Agreement ("Settlement Agreement") executed November 20, 1995, for the payment by Moonbeam to Willson of certain sums of money in consideration for dismissal of the Willson application for Calistoga, California. Pursuant to the Settlement Agreement, Moonbeam is required to deliver to Escrow Agent an executed Escrow Agreement, Promissory Note payable to Willson in the amount of \$300,000, a Deed of Trust to Secure the Note, and the personal guarantees of Fred and Mary Constant all in the form as in attached Exhibit 1 (all hereinafter referred to as "Documents"). Moonbeam and Willson desire that the Escrow Agent hold these documents as provided in this Agreement.

In consideration of the mutual covenants contained herein, the parties, intending to be legally bound, hereby agree as follows:

1. **Receipt of Documents.** By his signature below, Escrow Agent acknowledges receipt of Documents properly executed and notarized. Escrow Agent agrees to hold and to release the Documents only in accordance with this Agreement.

2. **Release of Documents.**

2.1 **Release of Documents.** Except as provided in Section 2.2, Escrow Agent shall release the Documents only (i) to Willson if Moonbeam fails to make the payment as provided in Paragraph 2 of the Settlement Agreement, incorporated by reference (ii) to Moonbeam if Moonbeam makes a cash payment of \$275,000 to Willson as provided in paragraph 2 of the Settlement Agreement; (iii) to the person or entity as directed on receipt of joint written instruction executed by Willson and Moonbeam; (iv) as directed in an order of an arbitrator pursuant to Section 6 hereunder; or (v) as directed in an order of the court in accordance with Section 3.1.2 hereunder. Upon release of the Documents as provided for herein, this Agreement shall terminate, and the Escrow Agent shall be discharged of any further liability.

2.2 **Claims.** Either party may notify the Escrow Agent and the other party, of its claim that it is entitled to the Documents. Such claiming party shall, in reasonable detail, cite the Section(s) of the Settlement Agreement and the facts and circumstances supporting its claim. Unless the other party objects by notice to the Escrow Agent and the other party within fourteen (14) days of its receipt of the claim, the Escrow Agent shall promptly release the Documents to the claiming party. If the other party does so object, then the Escrow Agent shall continue to hold the Documents and shall release it only in accordance with the terms hereof. Each party agrees that it will act only in good faith in making any claim or any objection pursuant to this Section 2.2.

3. Duties of Escrow Agent.

3.1 Duties in General.

3.1.1 Duties Expressed in Agreement. The Escrow Agent undertake to perform only such duties as are expressly set forth herein or as described in the Settlement Agreement (and required by applicable law), which of the parties agree are ministerial in nature. If in doubt as to their duties and responsibilities hereunder, the Escrow Agent may consult with counsel of their choice and shall be protected in any action taken or omitted in good faith in connection with the advice or opinion of such counsel. In the event this Escrow Agreement and Settlement Agreement conflict, the Settlement Agreement shall control.

3.1.2 Implications of Litigation. Subject to Section 7 herein, if the Escrow Agent should become involved in litigation with respect to this Escrow Agreement for any reason, he is authorized to deposit the Documents with the Clerk of such court in which such litigation is pending, or to interplead all interested parties in any court of competent jurisdiction and to deposit with the Clerk of such court the Documents. Upon the happening of either of the above, the Escrow Agent shall stand fully relieved and discharged of any further duties hereunder.

3.2 Exculpation. Except for the Escrow Agent's own willful misconduct, bad faith or gross negligence; (i) the Escrow Agent shall have no liability of any kind whatsoever for their performance of any duties imposed upon the Escrow Agent under this Escrow Agreement or for any acts or omissions hereunder; (ii) the Escrow Agent shall not be responsible for any of the acts or omissions of the parties hereto; (iii) the Escrow Agent shall not be liable to anyone for damages, losses or expenses arising out of this Escrow Agreement; and (iv) the Escrow Agent may rely and/or act upon any written instrument, document or request believe by the Escrow Agent in good faith to be genuine and to be executed and delivered by the proper person, and may assume in good faith the authenticity, validity and effectiveness thereof and shall not be obligated to make any investigation or determination as to the truth and accuracy of any information contained therein.

3.3 No Additional Duties. The Escrow Agent shall have no duties except those that are expressly set forth herein, and it shall not be bound by any notice of a claim or demand hereunder, or any waiver, modification, amendment, termination or recession of this Escrow Agreement, unless receive by it in writing.

3.4 Miscellaneous. The Escrow Agent may execute any of his powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through his Agents or attorneys. The Escrow Agent shall not be responsible for and shall not be under a duty to examine or pass upon the validity, binding effect, execution or sufficiency of the Escrow Agreement or of any agreement amendatory or supplemental hereto.

4. Indemnification of the Escrow Agent. In consideration of their acceptance of this appointment as Escrow Agent, Moonbeam and Willson jointly and severally agree (i) to indemnify and hold the Escrow Agent harmless as to any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct by the Escrow Agent to any person by reason of their

having accepted the same or in carrying out any of the terms hereof, and (ii) to reimburse the Escrow Agent on request for all their reasonable attorneys' fees and other reasonable costs and expenses incurred by Escrow Agent in connection with carrying out his duties hereunder.

5. Resignation of the Escrow Agent. The Escrow Agent, and any successor Escrow Agent, may resign at any time as Escrow Agent hereunder by giving at least fifteen (15) business days written notice to the parties. Upon such resignation and the appointment of a successor Escrow Agent, the resigning Escrow Agent shall be absolved from any and all liability in connection with the exercise of their powers and duties as Escrow Agent hereunder. Upon their receipt of notice of resignation from the Escrow Agent, Moonbeam and Willson shall use their reasonable best efforts jointly to designate a successor Escrow Agent. If the parties do not agree upon a successor Escrow Agent within fifteen (15) business days after the receipt by the parties of the Escrow Agent's resignation notice, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or other appropriate relief and any such resulting appointment shall be binding upon all parties hereto. By mutual agreement, the parties shall have the right at any time upon not less than seven (7) business days written notice to terminate their appointment of the Escrow Agent, or the successor Escrow Agent, as Escrow Agent hereunder. Notwithstanding anything to the contrary in the foregoing, the Escrow Agent or the successor Escrow Agent shall continue to act as Escrow Agent until a successor is appointed and qualified to act as Escrow Agent.

6. Dispute Resolution. If a dispute arises concerning a party's entitlement to some or all of the Documents, the parties hereby agree to submit such dispute to binding arbitration. The rules and procedures of the American Arbitration Association then in effect shall govern the proceedings conducted by the arbitrator. The parties agree that time is of the essence in a dispute over the Documents, and the parties hereby agree to use their reasonable efforts to expedite the resolution of any disputes. The prevailing party shall be entitled to recover its reasonable costs (including attorneys' fees) incurred in connection with such dispute. The venue for such arbitration shall be the American Arbitration Association in San Francisco, California.

7. Notices. All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally (which shall include delivery by Federal Express or other nationally recognized, reputable overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) business days after the date mailed by certified or registered U.S. mail, return receipt requested, postage paid, to addressees listed in **Exhibit A**, hereto, or to such other address as such party shall specify by written notice to the other parties hereto. Any notice sent to Escrow Agent shall also be sent to the other party to this Agreement.

8. Assignment. Moonbeam and Willson may assign their rights under this Agreement to the same extent they are permitted to assign their rights and obligations under the Settlement Agreement.

9. Miscellaneous. This Agreement, and with respect to Moonbeam and Willson, and the Settlement Agreement, embody the entire agreements and understandings of the parties concerning

the Documents. This Agreement may be amended only by a writing signed by the party against whom enforcement is sought. The headings in this Agreement are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Virginia, without regard to the choice of law rules utilized in that jurisdiction. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

To evidence their Agreement, the parties have caused this Agreement to be executed on the date noted below.

WILLSON:

Gary E. Willson

Date: _____

By: _____
Gary E. Willson, Individually

MOONBEAM:

Moonbeam, Inc.

Attest: _____

Date: _____

By: _____
Mary F. Constant, President

ESCROW AGENT:

Haley, Bader & Potts, P.L.C.

Date: _____

By: _____
Lee W. Shubert, Esq.

EXHIBIT A

If to Moonbeam: Mary F. Constant, President
2121 Diamond Mountain Road
Calistoga, CA 94515

If to Escrow Agent: Lee W. Shubert, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-0606

If to Willson: Gary E. Willson
2 Corte del Bayo
Larkspur, CA 94939

GUARANTY

This Guaranty (the "Guaranty"), dated as of _____, 1995, is made by Fred Constant and Mary Constant ("Guarantors"), in favor of Gary Willson ("Willson"):

RECITALS:

WHEREAS, Moonbeam, Inc. (Moonbeam) and Willson have entered into a Settlement Agreement contemplating the grant of the Moonbeam application and the dismissal of the Willson application for a new Class A FM radio station in Calistoga, California (the "Station") in exchange for payment of certain consideration and;

WHEREAS, Mary Constant is the sole shareholder of Moonbeam and Fred Constant is her husband;

WHEREAS, Willson is not willing to enter into the Settlement Agreement unless Moonbeam's obligations under the Settlement Agreement are guaranteed by the Guarantors; and

WHEREAS, as a condition precedent to Willson's obligations to enter into the Settlement Agreement, dismiss his application, and abide by the terms of the Agreement, the Guarantors are required to execute and deliver this Guaranty to Willson.

NOW THEREFORE, to induce Willson to accept the terms of the Agreement, the Guarantors, in consideration of the foregoing and for the benefits and advantages to be derived therefrom by the Guarantors, hereby agree as follows:

AGREEMENT

NOW THEREFORE, in order to induce Willson to enter into the aforementioned Settlement Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantors jointly and severally hereby represent, warrant, covenant, agree, and guaranty as follows:

1. **Definition.** "Guarantied Obligations" means all obligations of Moonbeam under the Settlement Agreement referenced above, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including obligations of performance as well as obligations of payment, including, but not limited to, payment of a Promissory Note payable to Willson in the amount of \$300,000, and including interest that accrues after the commencement of any bankruptcy or insolvency proceeding by or against Moonbeam.

2. **Guaranty of Guaranteed Obligations.** For valuable consideration, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty and promise to pay and perform on demand the Guaranteed Obligations and each and every one of them including, without limitation, all amendments, modifications, supplements, renewals or extensions of any of them, whether such amendments, modifications, supplements, renewals or extensions are evidenced by new or additional instruments, documents or agreements or the rate of interest is charged on any Guaranteed Obligation or the security therefor, or otherwise. Without limiting the generality of the foregoing, Guarantors agree to pay to Willson, upon written demand by Willson, any amount owed to Willson by Moonbeam on or with respect to any of the Guaranteed Obligations which Moonbeam shall not have paid when due.

3. **Nature of Guaranty.** This Guaranty is irrevocable and continuing in nature and relates to any Guaranteed Obligations now existing or hereafter arising. This Guaranty is a guaranty of prompt and punctual payment and performance and is **not merely a guaranty of collection.** This Guaranty is an absolute, unconditional, continuing guaranty of payment and not of collectability, is in no way conditioned upon any attempt to collect from Moonbeam or upon any other event or contingency, and shall be binding upon and enforceable against the Guarantors without regard to the genuineness, regularity, validity or enforceability of the Agreement, or of any term thereof or lack of power or authority of any party to execute it.

4. **Relationship to Other Agreements.** Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other document, instrument or agreement executed by the Guarantors or in connection with the Guaranteed Obligations, but each and every term and condition hereof shall be in addition thereto.

5. **Subordination of Indebtedness of Moonbeam to the Guarantors to the Guaranteed Obligations.** The Guarantors agree that:

(a) Any indebtedness of Moonbeam now or hereafter owed to the Guarantors hereby is subordinated to the Guaranteed Obligations.

(b) If Willson so requests, any such indebtedness of Moonbeam now or hereafter owed to the Guarantors shall be collected, enforced and received by such Guarantors as trustee for Willson and shall be paid over to Willson in kind on account of the Guaranteed Obligations.

6. **Statute of Limitations and Other Laws.** Until the Guaranteed Obligations shall have been paid and performed in full, all of the rights, privileges, powers and remedies granted to Willson hereunder shall continue to exist and may be exercised by Willson at any time and from time to time irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statute of limitations. The Guarantors expressly waive the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure. to the maximum extent permitted by applicable law.

7. **Waivers and Consents.** Upon the occurrence and during the continuance of any default under the Agreement, Willson may enforce this Guaranty independently of any other remedy or security Willson at any time may have or hold in connection with the Guaranteed Obligations, and it shall not be necessary for Willson to marshal assets in favor of Moonbeam or any Guarantors or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty. The Guarantors expressly waive any right to require Willson to marshal assets in favor of Moonbeam or any Guarantor or to proceed against Moonbeam or any Guarantor, and agrees that Willson may proceed against Moonbeam, any Guarantor and/or any collateral in such order as it shall determine in its sole and absolute discretion. The Guarantors expressly waive any and all defenses now or hereafter arising or asserted by reason of: (a) any disability or other defense of Moonbeam with respect to the Guaranteed Obligations, (b) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations, (c) the cessation for any cause whatsoever of the liability of Moonbeam or any other guarantor (other than by reason of the actual or deemed full payment and performance of all Guaranteed Obligations), (d) any failure of Willson to marshal assets in favor of Moonbeam, (e) any failure of Willson to give notice of sale or other disposition of any collateral to Moonbeam or any Guarantor or any defect in any notice that may be given in connection with any sale or disposition of any collateral, (f) any failure of Willson to comply with applicable laws in connection with the sale or other disposition of any collateral or other security for any Guaranteed Obligation, including, without limitation, any failure of Willson to conduct a commercially reasonable sale or other disposition of any collateral or other security for any Guaranteed Obligation, or (g) any act or omission of Willson or others that directly or indirectly results in or aids the discharge or release of Moonbeam or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise. The Guarantors expressly waive all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurring of new or additional Guaranteed Obligations.

8. **Condition of Moonbeam.** The Guarantors represent and warrant to Willson that they have established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of Moonbeam and its properties on a continuing basis, and that such Guarantors now are and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of Moonbeam and its properties. With respect to any of the Guaranteed Obligations, Willson need not inquire into the powers of Moonbeam or the officers or employees acting or purporting to act on its behalf, and all Guaranteed Obligations made or created in good faith reliance upon the professed exercise of such powers shall be guaranteed hereby.

9. **Understandings With Respect to Waivers and Consents.** The Guarantors warrant and agree that each of the waivers and consents set forth herein are made after consultation with legal counsel and with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy or

otherwise adversely affect rights which such Guarantors otherwise may have against Moonbeam, Willson or others, or against any collateral, and that, under the circumstances, the waivers and consents herein given are reasonable and not contrary to public policy or law. If any of the waivers or consents herein are determined to be unenforceable under applicable law, such waivers and consents shall be effective to the maximum extent permitted by law.

10. **Costs and Expenses.** The Guarantors agree to pay to Willson all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Willson in the enforcement or attempted enforcement of this Guaranty, whether or not an action is filed in connection therewith, and in connection with any waiver or amendment of any term or provision hereof. All advances, charges, costs and expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Willson in exercising any right, privilege, power or remedy conferred by this Guaranty, or in the enforcement or attempted enforcement thereof, shall be subject hereto and shall become a part of the Guaranteed Obligations and shall be paid to Willson by the Guarantor, immediately upon demand, together with interest thereon as provided under the Agreement.

11. **Construction of This Guaranty.** This Guaranty is intended to give rise to absolute and unconditional obligations on the part of the Guarantors; hence, in any construction hereof, this Guaranty shall be construed strictly in favor of Willson in order to accomplish its stated purpose.

12. **Liability.** The liability of the Guarantors hereunder is several and is independent of any other guaranties at any time in effect with respect to all or any part of the Guaranteed Obligations, and the Guarantors' liability hereunder may be enforced regardless of the existence of any such guaranties. Any termination by or release of any Guarantors in whole or in part shall not affect the continuing liability of the Guarantors hereunder, and no notice of any such termination or release shall be required.

13. **Continuing Liability of Guarantors.** In the event that the Agreement shall be terminated as a result of the rejection or disaffirmance thereof by any trustee, receiver or liquidating agency of Moonbeam, or any of its properties in any assignment for the benefit of creditors, or in any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding, the Guarantors' obligations hereunder shall continue to the same extent as if such obligation had not been so rejected or disaffirmed. The Guarantors shall and do hereby waive all rights and benefits which might relieve, in whole or in part, the Guarantors from the performance of their duties and obligations hereunder by reason of any such proceeding and the Guarantors agree that they shall be liable for all sums, including all damages imposed, provided for or payable under the terms of the Agreement, irrespective of, and without regard to, any modification, limitation or discharge of the liability of Moonbeam that may result from any such proceedings.

14. **Guarantors' Obligations Unconditional.** The obligations of the Guarantors shall be absolute and unconditional and shall not be subject to any counterclaim, setoff, deduction, or defense based on any claim they may have against Moonbeam.

15. **Subrogation.** The Guarantors agree not to exercise any right which they may acquire by way of subrogation hereunder, by any payment made by them on or with respect to any of the Guaranteed Obligations hereunder or otherwise, until all of the Guaranteed Obligations and all other expenses to be paid shall have been satisfied in full. If any amount shall be paid to Guarantors on account of such subrogation rights at any time when all of the Guaranteed Obligations and all such other expenses shall not have been paid in full, such amount shall be held in trust for the benefit of Willson, and shall forthwith be paid over to Willson to be applied in whole or in part by Willson against the Guaranteed Obligations, whether matured or unmatured, and all such other expenses.

16. **Miscellaneous.**

(a) No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by the Guarantors and Willson, and no waiver of any provision of this Guaranty, and no consent to any departure by either Guarantor therefrom, shall be effective unless it is in writing and signed by Willson, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of Willson to exercise and no delay in exercising, any right hereunder or under the Agreement shall operate as a waiver, nor shall any single or partial exercise or the exercise of any other right operate as a waiver. The rights and remedies of Willson provided herein and in the Agreement are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

(c) Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions or affecting the validity or enforceability of such provision in any other jurisdiction.

(d) This Guaranty shall: (i) be binding on the Guarantors and their respective heirs, successors or assigns, and (ii) inure, together with all rights and remedies of Willson hereunder, to the benefit of Willson and his successors and assigns. None of the rights or obligations of the Guarantors may be assigned or otherwise be transferred without prior written consent of Willson.

(e) This Guaranty shall be governed by, construed and enforced in accordance with the law of the State of California.

IN WITNESS WHEREOF, the Guarantors have executed this Guaranty as of the date first written above.

"Guarantors"

FRED CONSTANT

An Individual

MARY CONSTANT

An Individual

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this _____ day of _____, 1995.

My Commission Expires:

Notary Public